

DETAILED ACTION

Priority

1. Since a certified English translation of the priority documents have not been submitted by applicants the effective filing date of the instant application is 1/25/06.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 14-19 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. The polyamide claimed in these claims has no antecedent basis in the claims it depends from.

5. The term "fine metal soap" in claim 16 is a relative term which renders the claim indefinite. The term "fine metal soap" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Numerical definition is required.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the

Art Unit: 1796

applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-12, 20, 21 and 23-30 are rejected under 35 U.S.C. 102(e) as being anticipated by Douais et al. 2006/0041041.

8. Douais et al. disclose a power blend comprising polyamide 11, ammonium polyphosphate and fumed silica in paragraphs 0104 and 0108, sintering in claim 1, pigments in claim 2, zinc borate synergist in paragraph 0088, particle sizes in paragraph 0089 and molding process in paragraph 0096. All properties are inherent in the composition. The intended use has no patentable significance. The patentability of a product-by-process claim is determined by the novelty and non-obviousness of the claimed product itself without consideration of the process for making it which is recited in the claim. See *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985). Applicants' claims are not novel.

9. Claims 1-3, 5-8, 10-13, 20, 21 23-26 and 28-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Nass et al. 6,207,736.

10. Nass et al. teach ammonium polyphosphate in column 3, line 20, flame retardant powders in column 3, lines 47-55, polymer powders in column 3, lines 56-59, polymers in column 3, lines 40-46, melting points in column 4, lines 47-64, fillers and colorants in the paragraph overlapping columns 3 and 4 and synergists in claim 1. All properties are inherent in the composition. The intended use has no patentable significance. The patentability of a product-by-process claim is determined by the novelty and non-obviousness of the claimed product itself without consideration of the process for

Art Unit: 1796

making it which is recited in the claim. See *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985). Applicants' claims are not novel.

11. Claims 1-3, 5-10, 12-21, 23-25 and 28-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Staendeke 4,772,642, Srail et al. 5,286,576 or Staendeke 5,484,830, with McMills 4,570,055 or Hanson et al. 4,570,055 as evidence.

12. Staendeke ('642) recites pulverulent polypropylene, fine particulate ammonium polyphosphate, titanium dioxide and calcium stearate in Example 1 and microencapsulated ammonium polyphosphate in Examples 2 and 3. Srail et al. divulge UHMWPE powder and ammonium polyphosphate powder with glass fibers in claim 8, coated ammonium polyphosphate in column 4, lines 39-47, carbon black in column 6, line 27 and particle sizes in claims 9 and 10. McMills in column 3, lines 57-60 and Hanson et al in column 4, lines 7-8 show the particle size of Hostalen GUR 413. Staendeke ('830) reveals polypropylene powder, ammonium polyphosphate powder, titanium dioxide, pyrogenic silicic acid and calcium silicate in Example 5, coated ammonium polyphosphate and synergist in Examples 9-11. See also column 3, lines 58-67. All properties are inherent in the composition. The intended use has no patentable significance. The patentability of a product-by-process claim is determined by the novelty and non-obviousness of the claimed product itself without consideration of the process for making it which is recited in the claim. See *In re Thorpe*, 227 USPQ 964 (Fed. Cir. 1985). Applicants' claims are not novel.

Claim Rejections - 35 USC § 103

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 1, 2, 5-8, 10, 12, 20, 21, 23, 25, 26 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bredt et al. 7,087,109.

15. Bredt et al. display particle sizes in column 5, lines 38-42, ammonium polyphosphate in column 7, lines 25-26, fillers column 11, lines 19-54, polymers in column 9, lines 21-53 and flowrate enhancers in column 11, line 57. Layer-by-layer construction can be found in column 12, lines 56-67. It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to select ammonium polyphosphate and a water soluble polymer from a list of equivalents.

16. Claims 1-3, 5-10, 12-21, 23-25 and 28-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srail et al. 5,286,576, in view of Staendeke 5,484,830 or Staendeke 4,772,642, with McMills 4,570,055 or Hanson et al. 4,373,887 as evidence.

17. All references have been discussed already. It would have been obvious to one having ordinary skill in the art, at the time the invention was made, to add the titanium

Art Unit: 1796

dioxide, the pyrogenic silicic acid and the calcium stearate to the composition of Srail et al. because they are commonly used additives of polyolefins.

18. Since the examiner was unable to establish the particle size of all the materials shown by the cited references, the burden is shifted to applicants to prove that they are not within the limits of the claimed instant invention. This is proper because the materials in question are German materials and the inventors are German nationals.

Allowable Subject Matter

19. Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter Szekely whose telephone number is (571) 272-1124. The examiner can normally be reached on 6:10 a.m.-4:40 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1796

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Peter Szekely/
Primary Examiner, Art Unit 1796

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